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LEGAL REGULATION OF PROFESSIONAL LIABILITY INSURANCE OF MEDICAL WORKERS IN THE REPUBLIC OF KAZAKHSTAN: ANALYSIS OF THE CURRENT SITUATION

Abstract. The article discusses the legal foundations of the system of professional liability insurance for medical workers in the Republic of Kazakhstan and evaluates the practical application of insurance mechanisms. Particular attention is given to legislative initiatives and regulations governing the compulsory insurance of professional liability for medical workers, as well as to identifying problems and shortcomings within the current system. The mechanisms of professional risk insurance, the role of insurance companies, and the involvement of medical institutions in ensuring the protection of the rights of both patients and doctors are examined in detail.

The authors analyze existing gaps in legal regulation that may affect the effectiveness of the system and present proposals for improving legislation to enhance the level of legal protection for medical professionals and patients. International practices in the field of health insurance, which may offer useful insights for adapting the system in Kazakhstan, are also considered. The article concludes that improvements are necessary.

Keywords: medical care; medical professional; liability; insurance; patient; doctor; medical organization; insurance contract.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ МЕДИЦИНА ҚЫЗМЕТКЕРЛЕРІНІҢ КӘСІБИ ЖАУАПТЫЛЫҒЫН САҚТАНДЫРУДЫ ҚҰҚЫҚТЫҚ РЕТТЕУ: АҒЫМДАҒЫ ЖАҒДАЙҒА ТАЛДАУ

Аннотация. Мақалада Қазақстан Республикасындағы медицина қызметкерлерінің кәсіби жауаптылығын сақтандыру жүйесінің құқықтық негізі талқыланады, сақтандырудың тәжірибеде қолданылуына баға беріледі. Медицина қызметкерлерінің кәсіби жауаптылығын міндетті сақтандыруды, сондай-ақ қолданыстағы жүйедегі мәселелерге, реттейтін заңнамалық бастамалар мен нормативтік актілерге ерекше назар аударылады. Кәсіптік тәуекелдерді сақтандыру тетіктері, пациенттер мен дәрігерлердің құқықтарын қорғауды қамтамасыз етудегі сақтандыру компаниялары мен медициналық мекемелердің рөлі қарастырылады.

Авторлар сақтандыру жүйесінің тиімділігіне кері әсер етуі мүмкін құқықтық реттеудегі бар олқылықтарды, сондай-ақ медицина қызметкерлері мен пациенттерді құқықтық қорғау деңгейін арттыру мақсатындағы заңнаманы жетілдіру жолдарын талқылайды. Сондай-ақ, қазақстандық жүйені бейімдеу үшін пайдалы болуы мүмкін медициналық сақтандыру саласындағы халықаралық тәжірибелер қамтылған. Мақалада денсаулық сақтау саласындағы тұрақтылықты, оған деген сенімді нығайту үшін кәсіби жауаптылығын сақтандыру жүйесіне қатысты заңнаманы жетілдіру қажеттілігі туралы қорытынды жасалады.

Түйінді сөздер: медициналық көмек; медицина қызметкері; жауаптылық; сақтандыру; науқас; дәрігер; медициналық ұйым; сақтандыру шарты.



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ПРАВОВОЕ РЕГУЛИРОВАНИЕ СТРАХОВАНИЯ ПРОФЕССИОНАЛЬНОЙ ОТВЕТСТВЕННОСТИ МЕДИЦИНСКИХ РАБОТНИКОВ В РЕСПУБЛИКЕ КАЗАХСТАН: АНАЛИЗ ТЕКУЩЕЙ СИТУАЦИИ

Аннотация. В статье обсуждаются правовые основы системы страхования профессиональной ответственности медицинских работников в Республике Казахстан, дается оценка применения страхования на практике. Особое внимание уделяется законодательным инициативам и нормативным актам, регулирующим обязательное страхование профессиональной ответственности медицинских работников, а также выявлению проблем и недостатков в действующей системе. Рассматриваются механизмы страхования профессиональных рисков, роль страховых компаний и медицинских учреждений в обеспечении защиты прав пациентов и врачей.

Авторы анализируют существующие пробелы в правовом регулировании, которые могут влиять на эффективность системы, а также предложения по улучшению законодательства в целях повышения уровня правовой защиты медицинских работников и пациентов. Также освещены международные практики в области медицинского страхования, которые могут быть полезны для адаптации казахстанской системы. В статье делается вывод о необходимости совершенствования правового регулирования в сфере медицинского страхования для обеспечения стабильности и доверия в здравоохранении.

Ключевые слова: медицинская помощь; медицинский работник; ответственность; страхование; пациент; врач; медицинская организация; договор страхования.

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Introduction. Professional liability insurance for medical workers has been in use worldwide since the end of the last century. In Kazakhstan, until 2024, such insurance was available only on a voluntary basis, and the introduction of a mandatory system has been one of the most pressing issues in the healthcare sector in recent years. The large-scale implementation of professional liability insurance for medical workers in Kazakhstan required, first of all, the selection of an economically efficient model for the system, followed by the approval of specific procedures for its legal regulation.

At the end of 2024, the system of professional liability insurance for medical workers was launched. In order to consolidate the legislative framework, amendments were made to the Code of the Republic of Kazakhstan “On Public Health and the Healthcare System”, special orders of the Minister of Health of the Republic of Kazakhstan were issued, determining the insurance procedure, and amendments and additions were made to other regulatory acts.

This type of insurance is new for our country, and the issues of forming its legislative framework and applying insurance in practice are relevant. The scientific literature on it is mainly foreign, with only a few domestic theoretical and scientific studies.

The purpose of the scientific article is to review the legal basis of a new type of insurance, analyze the possibilities of its implementation in practice and the existing risks, and determine the necessary and sufficient conditions for professional liability insurance as a form of social and legal protection of medical workers.

Materials and methods. The legislative framework regulating healthcare in the Republic of Kazakhstan was used as materials for the preparation of the article, including a comprehensive analysis of individual articles of the Code “On Public Health and the Healthcare System”, the Law of the Republic of Kazakhstan “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Healthcare Issues” dated April 19, 2024, the



Orders of the Minister of Health of the Republic of Kazakhstan “On Approval of the Rules for Professional Liability Insurance of Medical Workers” and “On Approval of a Model Contract for Joint Professional Liability Insurance of Medical Workers” dated July 24, 2024.

During the research, a set of analysis, synthesis, systematic approach, dogmatic-legal and systematic-legal methods was used. With the help of these methods, it was possible to conduct an analytical review of the current legislation and the newly introduced amendments to it, determine the nature and features of legal relations arising in the field of professional liability insurance, discuss problematic issues in the area of the research topic, and develop proposals for the formation and improvement of legislation.

Results, discussion. The problem of medical error and the determination of its legal consequences occupy an important place among the current issues in jurisprudence. The reasons for this lie in the specifics of medical services, which are aimed at protecting one of the most important material values for a person – health. Opinions on the definition of medical error vary depending on the content and objectives of the research. A medical error is usually understood as an avoidable or predictable outcome of a medical action, resulting from a mistake in judgment, failure to follow professional standards, or an omission in the provision of care. It is important to distinguish this from intentional harm or gross negligence.

Domestic scientists also note that the number of complaints about the quality of medical services in the Republic of Kazakhstan is increasing. The majority of complaints received from citizens are related to professional ethics; however, the volume of complaints regarding the quality of medical services remains high [1].

No one is immune to errors, and the human factor will always be present. In this context, it is important to think about ways to prevent errors and reduce risks while maintaining appropriate working conditions for doctors. Cognitive support tools, such as action algorithms and communication tools, can also help reduce

errors in healthcare [2].

In 2019, the World Health Organization, at its seventy-second session, adopted a resolution highlighting the urgent need to focus on patient safety¹ worldwide. Every year, there are approximately 134 million cases of medical errors or negligence by healthcare professionals in developing countries, resulting in approximately 2.6 million deaths. In developed countries, it is estimated that one in ten patients suffers harm during hospital treatment. According to the World Health Organization, adverse health outcomes are one of the 10 leading causes of death and disability worldwide [1].

Although the professional liability insurance system constitutes a significant component of health policy, systematic and comprehensive research in this area remains insufficient. The existing liability insurance mechanisms primarily originated from the socio-economic conditions prevailing during the global crisis of the 1970s. The legal and institutional constraints of that period significantly influenced the current structure of the insurance system and contributed to its prolonged persistence. At present, this system continues to function under the influence of ongoing reforms and institutional transformations in the field of professional liability. According to data from the World Health Organization, medical errors are recorded in 8-12% of hospitalized patients in the member states of the European Union [3].

Nevertheless, global best practices and effective models serve as important guidelines for improving the professional liability insurance system in our country, fostering hope for its future development.

The best practices of professional liability insurance systems for healthcare workers have undoubtedly been established in the European Union countries. In the European Union, the insurance market is well-developed, and the legal regulatory mechanisms are comprehensive. For instance, in Belgium, France, and England, professional liability insurance for medical errors is mandatory, and the right of third parties to make direct claims against insurers is legally guaranteed. This system is designed

¹ Global action on patient safety // Seventy-second World Health Assembly: Resolution WHA72.6 of May 28, 2019 [Electronic resource] – Access mode: https://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_R6-en.pdf (Access date: 11.02.2025).



to protect patients' rights, enhance physicians' confidence, and ensure the financial stability of the healthcare system.

Under Belgian legislation, the compensation payable by the insurer is limited to the actual damages suffered by the insured. Such damages include losses related to the loss of use of property and loss of income.

Similarly, under French legislation, compensation is paid solely to cover the insured's losses. For example, as stated in Article L1142-2 of the French Public Health Code, damage refers to harm caused to third parties resulting from events covered by the insurance contract of the insured.

In English law, compensation is payable only for losses incurred during the insurance period. If the loss did not occur within the insurance period, a claim for compensation is not permissible [4].

Since 2010, professional liability insurance has been mandatory for healthcare workers in Turkey. This insurance system aims to protect physicians from errors and negligence that may arise in the course of their professional activities. However, the effectiveness of the insurance system and physicians' trust in it remain subjects of ongoing discussion. Studies have shown that although physicians consider this insurance necessary, there are issues concerning premiums and coverage limits [5].

In the United States, the professional liability insurance system for healthcare workers is highly developed and regulated differently in accordance with the legislation of each state. This insurance protects physicians from claims arising due to medical errors and negligence. The U.S. insurance system is characterized by high premiums and frequent litigation, which in turn contributes to increased healthcare costs [6].

The package of regulatory acts put into effect as a result of the 2020 reforms created a legal basis for ensuring the civil protection of the patient, but at the same time significantly increased the risks of the professional activities of a medical worker. This is because none of the existing regulations provided for the necessary norms for organizing and implementing proper legal protection of a doctor in the event of his civil liability for harming the life and health of a

patient. Only the Code "On Public Health and the Healthcare System" provided for the right of a medical worker to insure his professional liability for harming the health of a citizen due to negligence in the provision of services. However, this right of a medical worker is not disclosed in any of the special regulatory legal acts.

According to A.V. Tsoi, this situation has led to a violation of the legal balance in the relationship between the patient and the medical worker. The scales have tipped in favor of the patient, leaving medical workers-whose profession is inherently complex and associated with significant risks-practically without adequate legal protection [7].

Perhaps that is why the issue of professional liability insurance for medical workers has begun to appear on the agenda, and its adoption was only a matter of time.

The results of recent studies show that the majority of medical workers, or rather 65,7% of them, expressed a positive attitude towards the introduction of a system of professional liability insurance for medical workers in the Republic of Kazakhstan. Also, most specialists believe that it is important that the amount of premium paid for insurance takes into account the specialty of the insured, the region of work, and work experience [8, 79 p.].

According to domestic researchers, achieving positive results in this area requires selecting the most effective and practical approach for implementation. Based on the authors' study, three potential models of professional liability insurance have been identified as potentially suitable for the domestic healthcare system:

1. The establishment of an independent non-commercial fund dedicated to the compulsory professional liability insurance of medical workers.
2. The organization of professional liability insurance for medical workers through existing insurance companies.
3. The implementation of insurance through professional associations of medical workers of the Republic of Kazakhstan.

According to the authors, each of these options can contribute to the development of legal and financial protection for medical workers [9].

So, on April 19, 2024, the Head of State



signed the Law of the Republic of Kazakhstan “On Amendments and Additions to Certain Legislative Acts² of the Republic of Kazakhstan on Healthcare Issues”. The Code of the Republic of Kazakhstan “On Public Health and the Healthcare System” of July 7, 2020 has been supplemented with several articles. For example, new articles 270-1, 270-2, 270-3, 270-4 have been added to the code, and articles 7 and 15 have been supplemented, dedicated to the insurance of professional liability of medical workers³.

The orders of the Minister of Health of the Republic of Kazakhstan dated July 24, 2024 “On approval of the Rules for professional liability insurance of medical workers”⁴ and “On approval of a model contract for joint professional liability insurance of medical workers”⁵ were issued, which determine the procedure for applying insurance.

Medical liability insurance is a tool to protect medical professionals from claims related to their activities [10]. Insurance covers the risks of inadvertent harm to the health and life of patients as a result of the performance of professional duties by medical professionals.

According to paragraph 1) of Article 270-1 of the Code “On Public Health and the Healthcare System”: “Professional liability insurance of a medical worker is carried out on the basis of a joint insurance contract concluded by a healthcare entity with participants of a single insurance (reinsurance) pool”⁶.

According to the Minister of Health, Akmaral Alnazarova: “a three-tier system is being introduced in the country, which operates at the level of the medical organization, the regional health department, and the Committee for Medical and Pharmaceutical Control. If harm to a patient’s health is identified, and the

patient or their relatives are willing to accept compensation, the damage will be compensated from the insurance pool. The medical worker will not bear any direct financial responsibility, the compensation will be paid from the insurance fund, which is formed through annual premiums paid by employers for their medical workers”⁷.

It is stipulated that the healthcare organization is obliged to establish an independent expert commission within three working days after receiving information from the patient support service or a direct request from the patient, his/her spouse, close relatives or legal representative about possible harm to the patient's life and health as a result of medical services. This commission must determine and confirm the fact of harm to the patient's life and health in connection with medical services. The commission consists of specialists in the relevant fields, who are involved as experts, as well as representatives of professional medical associations and insurance companies participating in the unified insurance pool. Representatives of trade unions of medical workers and a mediator may be involved in the work of the commission. The register of specialized specialists who may be invited to consider such applications is formed by local health authorities of regions, cities of republican significance and the capital. Specialized specialists involved in expert work must comply with the requirements established by the authorized body.

A person cannot be an expert if:

- he/she has been subject to a court-ordered administrative penalty for giving a manifestly false conclusion within the last year;
- he/she has a criminal record that has not been served or recovered in accordance with the procedure established by law;
- he/she has been convicted of a criminal

² Қазақстан Республикасының кейбір заңнамалық актілеріне денсаулық сақтау мәселелері бойынша өзгерістер мен толықтырулар енгізу туралы: Қазақстан Республикасының Заңы 2024 ж. 19 сәуірдегі № 74-VIII ҚРЗ [Electronic resource] – Access mode: <https://adilet.zan.kz/kaz/docs/Z2400000074> (Access date: 19.02.2025).

³ On public health and healthcare system: Code of the Republic of Kazakhstan dated July 7, 2020 № 360-VI [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K2000000360> (Access date: 19.02.2025).

⁴ Медицина қызметкерлерінің кәсіптік жауапкершілігін сақтандыру қағидаларын бекіту туралы: Қазақстан Республикасы Денсаулық сақтау министрінің 2024 ж. 24 шілдедегі № 58 бұйрығы [Electronic resource] – Access mode: <https://adilet.zan.kz/kaz/docs/V2400034803> (Access date: 19.02.2025).

⁵ Медицина қызметкерлерінің кәсіптік жауапкершілігін ортақ сақтандырудың үлгілік шартын бекіту туралы: Қазақстан Республикасы Денсаулық сақтау министрінің 2024 ж. 24 шілдедегі № 57 бұйрығы [Electronic resource] – Access mode: <https://adilet.zan.kz/kaz/docs/V2400034802> (Access date: 19.02.2025).

⁶ On public health and healthcare system: Code of the Republic of Kazakhstan dated July 7, 2020 № 360-VI [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K2000000360> (Access date: 24.02.2025).

⁷ С октября 2024 года в Казахстане введено вменное страхование профессиональной ответственности медицинских работников [Electronic resource] – Access mode: <https://ortcom.kz/ru/novosti/1732530943> (Access date: 25.02.2025).



offense within the last three years or has been released from criminal liability for committing a criminal offense.

The patient or his/her close relatives, spouse, legal representative have the right to participate in the meetings of the commission. Representatives of the healthcare organization where the treatment was provided cannot be members of the commission. If it is not possible to involve specialists, the local healthcare authority is obliged to ensure the presence of the necessary expert. The procedure for the work of the independent expert commission and the minimum requirements for determining the fact of harm to the patient's life and health shall be established by the authorized body. The commission must issue a conclusion within five working days confirming or denying the fact of harm to the patient as a result of medical services. The conclusion of the commission is drawn up on the basis of the opinions of specialized specialists based on proven scientific and clinical data and serves as the basis for confirming the insurance status within the framework of the professional responsibility of the medical worker⁸.

However, we assume that in practice, problems may arise when creating such commissions. There is a suspicion that the system will not be fully functional due to the lack of qualified experts, especially in the regions. In addition, the issue of paying experts who are part of the commission has not been resolved in the legislation.

Industry specialists and experts also mention the existence of such risks. For example, according to R. Duysenov, executive director of the Almaty Clinics Association, member of the Medkonstruktor Association of Doctors: "Firstly, we may not have enough experts to create a special expert commission for each complaint, and secondly, there is the issue of paying them. It is clear that the specialists involved in the commission will not perform their services for free. And the medical organization will have

to pay the expenses paid to the experts. As a result, the administration of small hospitals will try not to submit the complaint to the insurance company, but instead will try to negotiate directly with the patient and offer him the money. And in this case, the point of insurance will also be lost" [11].

According to Almagul Kauysheva, Director of the Department of Science and Human Resources of the Ministry of Health of the Republic of Kazakhstan: *"Today, the rules for the activities of experts have been approved. Their number should be about 12,500 throughout the republic, and work is currently underway to form a register of such specialists in the regions. We are also considering the issue of paying for the services of experts. However, this is still only a plan"* [12].

Healthcare entities (medical organizations and individuals engaged in private medical practice) are obliged to insure the professional liability of medical workers and conclude an insurance contract with a single insurance pool. The single insurance pool was established on October 2, 2024 and will operate on the basis of a joint activity agreement concluded by its participants. The pool includes 14 insurance organizations licensed by the authorized body for the class of professional liability insurance⁹.

The newly introduced Article 270-4 of the Code establishes the minimum amounts of insurance payments in the form of 500, 600, 800 MCI in the event of a patient being diagnosed with a disability of the third, second and first groups, respectively, a child with a disability – 500 MCI, for damage resulting in death – 3000 MCI, for damage caused to the life and health of the patient without establishing disability – 300 MCI. The legislation also establishes the amount of reimbursement of expenses for the services of lawyers to insured medical workers, which does not exceed 5% of the amount of insurance premium paid by this healthcare entity¹⁰.

Another issue that could be difficult to implement in practice is the expected increase

⁸ On public health and healthcare system: Code of the Republic of Kazakhstan dated July 7, 2020 № 360-VI [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K2000000360> (Access date: 03.03.2025).

⁹ В Казахстане начали страховать ответственность медработников [Electronic resource] – Access mode: https://www.kt.kz/rus/state/v_kazahstane_nachali_strahovat_otvetstvennost_medrabotnikov_1377970624.html (Access date: 05.03.2025).

¹⁰ On public health and healthcare system: Code of the Republic of Kazakhstan dated July 7, 2020 № 360-VI [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K2000000360> (Access date: 05.03.2025).



in claims volume. We believe that this risk is real and could have a negative impact on the insurance market and hinder the successful implementation of the overall system.

According to one of the drafters of the law, insurance market expert Yerlan Burabayev: “Patients do not distinguish between the concepts of “medical accident” and “medical error» and begin to independently determine the scope of responsibility of a medical professional”. *“Some cases may not be the doctor’s fault, but patients will try to prove the opposite, and there may be many such attempts. Each case will have to be determined by clinics and expert committees, which is understandable, not easy”* [8]. What we would like to note here is that paragraph 5) of Article 270-1 of the Code clearly states: “a medical accident is not an insured event”¹¹.

Representatives of the relevant ministries are also aware of the existence of such risks, as Almagul Kauysheva noted: “We understand that there will be much more complaints, their number may increase by 40-50 percent. It is quite possible that some patients really want to receive compensation, while others, wanting to use it as additional income, will file unfounded complaints” [12].

The increase in the volume of claims is likely to place a significant burden on the insurance system and increase the work of expert commissions. It is clear that considering the validity of each claim and examining the related documents will affect the time it takes to process claims.

According to M.A. Alchimbaeva, specific solutions are needed that will improve the functionality of the healthcare system, provide a favorable environment for the provision of medical services, and reduce many economic, social, and legislative burdens. They will help create a safety zone for medical workers and reduce the risk of deterioration of relations with the patient. The author includes such solutions as the need to focus “legislative attention” not on tightening punishment for professional misconduct, but on satisfying the victim, the need to take measures to prevent the formation of practices that include elements of “defensive

medicine”, stimulating the activities of medical personnel through KPIs, feedback, and so on [8, pp. 90-92].

Conclusion. Professional liability insurance of medical workers is insurance of compensation for harm caused to the life and health of patients as a result of the performance of their activities by medical workers. We assume that the introduction of such insurance in our country should contribute to the effective protection of the population from professional errors of doctors, as a result of poor-quality medical care. In such a situation, the new procedure for compensation for harm caused will undoubtedly contribute to increasing patients' confidence in the quality of medical care provided. According to the conclusion of the independent expert commission, if harm to the life and health of patients is determined, the insurance payment will be made immediately, that is, the period for payment of compensation should be reduced, and this can be considered one of the important advantages of introducing this type of insurance.

Based on the analysis of the newly introduced legislative innovations, we have determined that neither the Code “On Public Health and the Healthcare System” nor the two above-mentioned orders provide a definition of “Professional Liability Insurance of Medical Workers”, and we believe that there should be a clear definition of such a basic concept. We believe that such a definition should be included in the “basic concepts” given in paragraph 2 of Chapter 1 of the Order of the Ministry of Health of the Republic of Kazakhstan “On Approval of the Rules for the Insurance of Professional Liability of Medical Workers” dated July 24, 2024.

The approval of the definition will establish a specific legislative concept of professional liability insurance for medical workers and prevent various interpretations and distortions regarding it. The following text is proposed for the definition: “Professional liability insurance for medical workers is insurance of compensation for harm caused to the life and health of a patient as a result of the provision of medical services by medical workers”.

¹¹ On public health and healthcare system: Code of the Republic of Kazakhstan dated July 7, 2020 № 360-VI [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K2000000360> (Access date: 05.03.2025).



We believe that it is still too early to make any recommendations for improving the legislation, since the type of insurance under discussion is just being introduced in our country, and we assume that it will be possible to analyze its practical results only in a year or two. The fact that the issues raised in this analysis are largely speculative suggests that further research in

this area is still needed.

We believe that this is the approved procedure for now, and the legal basis for insurance has been laid. The adopted package of regulatory acts fully defines the procedure for professional liability insurance of medical workers in our country and should be sufficient for its introduction at the initial level.

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